

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO.307 OF 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

VALIBHAI JAMALBHAI MOMIN & ANOTHER

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Appearance:

Mr. K.C. Shah, A.P.P.for appellant-State.

MR BB NAIK for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 12/02/98

ORAL JUDGEMENT

The appellant-State has filed this appeal against the judgment and order of acquittal in Criminal Case no.1524/1985 dated 27th February, 1989 passed by the learned Metropolitan Magistrate, Court no.7, Ahhmedabad of the charge under Section 338 read with Section 114 of the Indian Penal Code. It is stated at the Bar by learned Advocate Mr. B.B. Naik for respondents that the respondent no.1 original accused no.1 has died on 25th April, 1994. He has produced xerox copy of the death certificate. The same be taken on record. Thus, appeal against the respondent no.1 has abated. So far as the respondent no.2 is concerned, he is not a Doctor , however, from the record, it appears that he is the son of a bone setter the respondent no.1 and may have at the most assisted his father while the bandage was applied to

the deceased son of the complainant when he was treated by the respondent no.1 on 5th September, 1984. After applying bandage on the hand by the respondent no.1, it appears that something had gone wrong. So victim was brought back to the Doctor on the next day and he was again treated till 9th September, 1984 as no improvement was noticed. The victim was taken to the L.G.Hospital where he was admitted in the hospital on 10th September, 1984 and it appears that he was operated on 18th September, 1984. The learned Magistrate has rightly considered that it cannot be decided beyond reasonable doubt as to who was negligent, if at all, in treating the victim, whether respondent no.1 or L.G.Hospital and he has given benefit of doubt to the accused as no act of aiding is proved on the part of the respondent no.2. The learned Magistrate has held that he is not responsible for the act which may constitute offence under Section 338 of the Indian Penal Code. I am taken through the whole judgment and evidence on record. I do not find any reason to defer with the finding of the learned Metropolitan Magistrate. Finding of the learned Metropolitan Magistrate does not call for any interference, more particularly, in view of the limitations of this Court to interfere with the acquittal appeals. The appeal is dismissed qua the respondent no.2 and stands abated against the respondent no.1.

sf-sms (S.M.Soni,J.)